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JUDICIAL OVERSIGHT AND CONSTITUTIONALISM: A COMPARATIVE ANALYSIS OF INDIA VS. USA

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ABSTRACT

Judicial review is a fundamental component of constitutional governance, guaranteeing that no legislation or action exceeds the limits established by a country's highest legal authority; the Constitution. The present research investigates judicial review as a key component of constitutionalism, contrasting its origins, features, and roles in the United States and India. While both countries value the rule of law, they have established various approaches to judicial scrutiny that are anchored in their own constitutional histories and institutions. This paper examines the evolution of judicial review, emphasising its importance in ensuring checks and balances between the legislative, executive, and judicial branches. Furthermore, it examines the extent and scope of judicial review in each country, weighing its achievements, limits, and criticisms. This study attempts to give a comprehensive understanding of judicial review's influence on governance and function in sustaining constitutional ideals by investigating it in two separate legal environments.

INTRODUCTION

Judicial Review empowers the Supreme Court or a High Court to overturn an executive or legislative act that breaches constitutional standards. The Constitution protects this ability as an essential component. It cannot be abolished. In recent years, several government judgements have been reversed owing to illegality, procedural errors, or other reasonable considerations. It is a basic feature of the Indian Constitution that cannot be modified, even if amended. Articles 32, 13, 143, 131-136, 226, 145, 246, 251, 254, and 372 of the Constitution ensure judicial scrutiny of legislation. It is incorporated in Articles 226 and 227 of the Constitution, which refer to High Courts. Articles 32 and 136 of the Constitution establish the Supreme Court's role

ISSN (O): 2584-2196

in judicial review. Article 32 is a basic right that can be utilised to enforce the fundamental rights guaranteed in Part III. Judicial review of administrative actions can be sought under following grounds.

1. The legitimacy of Expectation
2. Impropriety of Procedure
3. Irrationality
4. Error of Jurisdiction
5. Proportionality

These judicial review grounds, while not complete, provide as a good foundation for courts to assess administrative actions for efficiency, justice, and accountability.

Judicial review refers to the procedure by which the judiciary determines if laws approved by parliament, state legislatures, the Constitution, or public regulations are constitutionally sound. If not, the Court will not accord the state in question effect. The Court does not consider the legislation's wisdom, expertise, or policy while determining its legality. "It neither supports nor opposes any legislative policy," Chief Justice Marshall stated. The goal of this delicate and complicated body is to assess if legislation complies with or violates the Constitution's requirements. Once this is accomplished, the body's work is complete.

The Constitution is a complex convention that requires interpretation to properly understand its meaning. However, it delegated certain authority to the administrative and legislative arms of government. While exercising their powers, they interpret the Constitution's words in their own way. If a citizen feels the legislature exceeded its constitutional power, they might seek to have the law declared unconstitutional. The Court interprets the Constitution to decide the legality of challenged statutes. Judicial review can interpret the Constitution and determine the validity of a legislation.

The American Constitution established judicial review, making the Supreme Court the world's most powerful institution. India has followed likewise. Judicial review is not restricted to federal and state laws in the US. It has a wider scope. The court oversees state constitutions, federal treaties, and executive directives from both federal and state authorities. However, they do not cover political problems. This has helped to rebuild prevalent faith in the Supreme Court. Supreme courts have the unique responsibility of reviewing the exercise of authority by public authorities, whether constitutional, quasi-judicial, or governmental. It can only be used if: The individual who has been mistreated brings the decision to the Court's notice. Judicial review refers to the judiciary's ability to determine the legality of laws or orders. The Constitution is

ISSN (O): 2584-2196

the state's ultimate Judicial review considers the law and any statute that contradicts it to be invalid.

RESEARCH OBJECTIVE

The Research Objectives for the Present study are as follows;

1. To examine the historical background and constitutional basis of judicial review in India and the United States.
2. To identify the major parallels and contrasts in judicial review processes between India's Supreme Court and the United States.
3. To assess how judicial review affects the balance of power between the arms of government in India and the United States.
4. To investigate the shortcomings and limits of judicial review in both nations, as well as the consequences for democracy.

RESEARCH QUESTIONS

The Research questions for the present Study are as follows;

1. What are the historical origins and constitutional bases of judicial review in India and the United States?
2. How do judicial review practices in India differ from those in the United States?
3. What role does judicial review play in maintaining the balance of power across governmental branches in each country?
4. What are the key challenges and criticisms of judicial review in India and the United States?

RESEARCH METHODOLOGY

This study employs a qualitative research approach, utilizing secondary data sources exclusively to conduct a comparative analysis of judicial review in India and the United States. Data is gathered from a comprehensive range of secondary sources, including scholarly articles, legal textbooks, government publications, and case law documents from both jurisdictions. Furthermore, authoritative commentaries on judicial review practices, historical records, and constitutional law analyses are reviewed to provide an in-depth understanding of both legal systems.

ISSN (O): 2584-2196

THE ORIGIN OF JUDICIAL REVIEW

In the US, courts can review statutes, administrative rules, and judicial judgements to see if they contravene existing laws or the state or federal constitutions. The United States Supreme Court may overturn legislation, laws, or judgements that contradict higher authority, as part of its judicial review powers. Judicial review is part of the checks and balances system, where the government's judicial branch oversees both legislative and executive branches. Researchers and critics believe that John Marshall, a notable Chief Justice of the United States Supreme Court, established the authority of Judicial Review. *Marshall's Marbury v. Madison*[1] ruling aimed to create judicial review.

Historian Edward Corwin defined "Judicial Review" as the courts' authority to invalidate federal or state government legislation or executive actions. [2]The problem stemmed from political squabbles in the weeks before President John Adams left for Thomas Jefferson. At the end of Adams' administration, the next President and Congress revoked some of his judicial nominees and passed a legislation to increase the number of Presidential judicial appointments. The Supreme Court deemed the Act of Congress unconstitutional for the first time in the republic's history. The Court asserted its authority over judicial review, underlining the judicial branch's responsibility to clarify the law. On the final day of his presidency, John Adams, a Federalist, appoints 82 Federalist justices. The "midnight judges," as they were known, posed a challenge to Democrat-Republican President Thomas Jefferson. Jefferson was concerned about the Federalist interpretation of the law over the next 20 years, and his fears were realised. Mr. William Marbury served as one of the midnight judges. Jefferson's Secretary of State, James Madison, did not send the formal document certifying Marbury's appointment. Marbury appealed to the Supreme Court for a "writ of mandamus," or an order to act, under the Judiciary Act of 1801. Chief Justice John Marshall believed that requiring Madison to provide the papers would degrade the Court's image.

When the Supreme Court of the United States invalidates an act, it exercises its judicial review powers. Dimock & Dimock claimed that Congress or state legislatures may not be in compliance with constitutional standards. As a result, it is now widely acknowledged that the Supreme Court When federal and state laws are challenged in court, their constitutional

[1] (5 U.S(1 Cranch)137(1803)
[2] Word GS, 'The Origins of Judicial Review, or How the Marshall Court Made More Out of Less' (1999) 56(3) *Washington and Lee Law Review* 1019

ISSN (O): 2584-2196

legitimacy is evaluated. The Supreme court has the competence to strike down legislation that is considered to be ultra vires.

CONSTITUTIONAL FOUNDATION OF JUDICIAL REVIEW IN THE UNITED STATES

The American Constitution does not grant the Supreme Court the authority to make such a judicial review resolve. Some commentators have questioned the Court's right to exercise power. President Jefferson criticised the founding fathers' plan to create three independent government departments and give the judiciary the power to review Congress and President acts as a violation of separation of powers and limited government principles, as well as a betrayal of the Constitution's goals. The majority of Philadelphia Convention members supported judicial review, based on evidence. They did not include a specific provision as they believed Articles III[3] and VI conveyed the necessary power. [4]

CONSTITUTIONAL FOUNDATION FOR JUDICIAL REVIEW IN INDIA

Judicial Review considers that law should promote harmony, joy, and amicability. The ruler does not have the legal authority to oppress individuals or usurp their fundamental rights, which are rooted in Indian culture and tradition. Judicial Review is to protect privileges, prevent infringements, and ensure compliance with the Constitution. In India, such a soul was prevalent.

In India, law is regarded as the king of monarchs, capable of empowering even the weak to defeat the strong. The Vedic concept of sway held that the state was a trust, and the monarch was the legal administrator of persons. The Yajur Veda's depiction of crowning ordinances and Abhisheka (royal celebration) highlights the concept of ideals, sovereignty, and the rule of law, which aligns with the principle of Legal Review. As a result, the core of judicial review may be derived from the fundamental concept of law.

Judicial Review has its roots in ancient India, mediaeval Europe, pre-upheaval England, and post-constitutional systems in the United States and others. Specific nations with a tradition of Judicial Review from the United States, such as Canada, Australia, Ireland, and Japan. In ancient India, the Rule of Law held that the law was supreme above the king and that the public

[3] United States Constitution, art VI, § 2.
[4] United States Constitution, art III, § 2.

ISSN (O): 2584-2196

authority lacked the authority to make any decisions.[5] Discretionary or overbearing legislation against the public power. Consequently, individuals of ancient India envisioned and valued the incomparability of the law, rather than the incomparability of the Lord. In frontier courts, Chief Justice Coke's rule was often used to examine the legality of certain cases. The United States of America demonstrated a vote-based system and the power of judicial review to prevent despotism and oppression, rather than relying on a specific arrangement in the Constitution. India successfully included judicial review into its Constitution.

India's Constitution is unusual in that it establishes new rules for the modern world. The Supreme Court of India's Chief Justice, Patanjali Shastri, stated that the court must ultimately determine the legitimacy of a challenged decision, even if it adds an extra burden to the administrative judgement.[6]

EVOLUTION OF JUDICIAL REVIEW IN INDIA

The Indian Constitution has elements of both American and British law. In contrast to the English Parliament, the Indian Parliament does not have the authority to make laws independently. Our theological framework bridges the gap between American legal incompatibility and English legislative excellence. [7]The most essential provision of the Indian Constitution is the right to judicial review. India's vote-based system limits the use of force by state officials, preventing oppression and interference.

The most essential provision of the Indian Constitution is the right to judicial review. India's vote-based system limits the use of force by state officials, preventing tyranny and interference. The Preamble of the Indian Constitution guarantees fair and equitable treatment for all people, as well as judicial review of the country's laws. The majority governs, but the most successful rule relies on tyranny. [8]A majority rule system requires an independent body to function effectively. India's Constitution serves as the foundation for all other legislation.

The drafters of the Constitution recognised the problems of Judicial Review and implemented measures to restrict its scope and avoid courts from functioning as "super assembly" or "third loads. The Indian Constitution has Judicial Review measures to balance federalism, safeguard people' rights, and promote uniformity, freedom, and opportunity.

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[5] 'Judicial Review in India: Importance, Landmark Cases, and Criticism' (Mondaq, 18 October 2023) https://www.mondaq.com/india/constitutional-administrative-law/1467242/judicial-review-in-india-importance-landmark-cases-and-criticism accessed 27 October 2024.

[6] *The State of Madras v V G Row* AIR 1952 SC 196, [13].

[7] Basu DD, *Commentary on the Constitution of India* (Calcutta, 1955) 412.

[8] Jha C, *Judicial Review of Administrative Acts* (BM Tripathi Private Limited, Bombay 1974) 95.

ISSN (O): 2584-2196

The Judicial Review now plays an important role in the Indian majority rules system. According to the Indian Constitution, this action aims to protect individuals' rights and opportunities. In India, the Union Parliament holds residuary authority, which raises concerns about the participation of associations.

When determining the legitimacy of a law that violates the Constitution's provisions for driving circulation, the Indian legal executive should keep this in mind. To understand the Judicial Review, it's necessary to have a comprehensive understanding of the legal systems in India, England, the United States, Canada, and Australia. The legal survey structure emerged unexpectedly, but has progressively advanced over time.

JUDICIAL APPROACH; INDIA & USA

The courts' primary function is to settle disputes between individuals and the state, or between states and the association. Courts may be required to interpret the Constitution and legislation, and the Supreme Court's translation becomes law for all courts to follow.

Shankari Prasad vs. Union of India:[9]

The Supreme Court held that the First Amendment Act of 1951 violated the right to property due to limitations on altering Fundamental Rights under Article 13 of the Constitution (2). The Supreme Court excused the issue and administered collectively. "The expressions of Article 368 are totally wide and grant parliament to adjust the constitution without any special cases." Article 13 defines regulation as both conventional administrative standards and constitutional amendments made by constituents. Article 13 (2) makes little difference to adjustments made under Article 368.

Vishakha v. State of Rajasthan:[10]

The Supreme Court established guidelines for businesses and individuals responsible for workplaces to prevent lewd behaviour among female employees until regulations are implemented to address the issue. Managers were required to respect women's vital rights under Articles 14, 19, and 21.

Keshavananda Bharti case:[11]

On April 24, 1973, the Supreme Court resolved the Keshavananda Bharti case, often known as the Fundamental Rights case. The discussion focused on the extent to which Article 368 of the

[9] AIR 1951 SC 458
[10] AIR 1997 SC 3011.
[11] AIR 1973 SC 1461

ISSN (O): 2584-2196

Constitution grants power to change things. The Union of India has unrestricted jurisdiction to revise the Constitution without invalidating it. The petitioner argued that the revising authority was broad but not limitless. Article 368 prohibits Parliament from abolishing the Constitution's "fundamental element". An exceptional bench of judges was formed to hear the case.11 of the 13 Judges had a problematic and doubtful core design principle. The court clarified that amending the Constitution under Article 368 does not imply removing its core principles or framework. Regardless, the Supreme Court deemed "Fundamental" highlights were not clearly out or presented accurately in the many assessments offered for this situation. Indeed, even before the Twenty-fourth Amendment, the vast majority felt that Article 368 Included the option to alter and the method for doing so.

United States v. Nixon ("Watergate") (1974):[12]

During the 1972 election campaign between Republican President Nixon and Democratic Senator McGovern, the Democratic work settings at the Watergate site were broken into. Nixon terminated Archibald Cox, a federal agent assigned to examine the matter, before he could complete his work. The new examiner requested Nixon to provide detailed reports and tapes, which included evidence against him in all relevant areas. Nixon changed the records of 43 taped conversations, claiming "through and through pioneer honour" over correspondences between high-level government officials and those who assist them. He also requested that the call be overturned and the records be dismissed. The Supreme Court initially determined that the indictment had sufficient evidence to warrant a summons. They then thoroughly addressed the issue of chief honour. Nixon's claim of immunity from official conduct was deemed insufficient and discarded. Nixon resigned on August 9, 1974, following the "Watergate" scandal.

Plessey v. Ferguson:[13]

Homer Plessey spoke before the Supreme Court after being imprisoned for violating the law that required "Blacks" to ride in separate train cars. He ensured that the purported "Jim Crow" legislation violated his Fourteenth Amendment right to "equivalent security under the law." During the legal audit, the state certified that Plessey and other Blacks were treated identically, but in different ways. The Court upheld Plessey's conviction, ruling that the fourteenth Amendment provides "equivalent offices," not "indistinguishable offices." The Supreme Court established "separate but equivalent" in this decision.

[12] 418 U.S. 683
[13] 163 U.S. 537 (1896).

ISSN (O): 2584-2196

Miranda v. Arizona (1966):[14]

The Miranda rights movement began in 1963, when Ernesto Miranda was imprisoned and questioned in Phoenix, Arizona for assaulting an 18-year-old. Miranda, who had never mentioned counsel, acknowledged during the lengthy conversation and was charged with assault and sentenced to jail. A lawyer said that Ernesto Miranda's liberties were violated since he was unaware that he did not need to speak with the officers. The Supreme Court overturned Miranda's conviction in 1966. The Court argued that suspects should be informed of their right to a counsel and the option to stay quiet while being treated by legal professionals.

According to the judgement, collecting attestation, affirmation, or confirmation prior to informing individuals about their prospects is prohibited in court. Miranda's retrial resulted in the now-famous "Miranda Rights," which are granted to suspects by officers nationwide.

COMPARATIVE EVALUATION

Here is a comparative study of judicial review critiques in India and the United States, focussing on democracy, efficiency, clarity, legislative dependence, judicial activism, and the possibility of undemocratic consequences.

Democratic Concerns and Judicial Authority:

India: Critics argue that judicial review can be undemocratic, as it allows unelected judges to override legislation created by elected representatives. This power potentially undermines the sovereignty of the people, as it grants the judiciary the final say on matters of law, which some argue should lie with the legislature.

U.S.A.: Similarly, in the U.S., judicial review has led to the Supreme Court acting as a quasi-legislative body or "third chamber." Scholars like Harold Laski describe the Court as a "non-elected legislature," allowing justices to interpret laws based on concepts of fairness and justice, which are often subjective and influenced by personal or political philosophies. The court's rulings can significantly impact legislation, occasionally vetoing initiatives like social welfare laws based on subjective definitions of justice.

Lack of Clear Constitutional Framework:

India: In India, judicial review is not explicitly established in the constitution, unlike the United States where it is implied by provisions like Article VI, § 2 (Supremacy Clause) and Article III, § 2 (Judicial Powers). It is based on judicial interpretations of constitutional provisions and precedents, which can lead to inconsistencies and ambiguity in application.

[14] 384 U.S. 436(1966).

ISSN (O): 2584-2196

U.S.A.: The U.S. Constitution also does not explicitly define judicial review, but it has been solidified through landmark cases like *Marbury v. Madison,* setting a precedent for its exercise. While this implicit foundation allows flexibility, critics argue it creates a political element within the judiciary.

Legislative and Administrative Implications:

India: Judicial review can disrupt administration by overturning legislation that may have been in place for years. This delay generates administrative issues and inefficiencies, since legislation deemed legitimate originally may be struck down years later, undermining governance continuity.

U.S.A.: Similarly, the United States Supreme Court's retroactive annulment of statutes can have far-reaching administrative consequences. When legislation such as social reform or tax restrictions are overturned, the court system's interference is frequently considered as a hindrance to effective government, particularly in light of long-standing sociopolitical concerns.

Inefficiency and Delay in the Judicial Process:

India: The Indian court review process frequently causes considerable delays. For example, authorities may postpone law implementation while awaiting judicial decisions, resulting in inefficiencies that affect law enforcement and policy enactment.

U.S.A.: In the United States, the judicial review process has also been criticised for delaying necessary reforms. The Supreme Court's requirement for extensive deliberation sometimes means that contentious issues, such as civil rights, can take years to be resolved, which postpones social progress.

Concerns about judicial activism and the "one-man rule":

India: There is a concern that the power of judicial review would lead to judicial activism, in which rulings are influenced by individual justices' viewpoints rather than existing law. Single-judge or small-majority rulings can invalidate legislation passed by Parliament, sparking charges of "one-man rule" when critical decisions depend on thin majorities.

U.S.A.: Similar problems exist in the United States, where narrow 5-4 Supreme Court verdicts can have enormous national policy implications. Critics point to cases such as Bush v. Gore, in which one justice's vote effectively influenced the outcome of the United States presidential election, as examples of the enormous authority given in individual judges and the possibility of judicial overreach.

ISSN (O): 2584-2196

Inconsistency in judicial rulings:

India: The Indian court has come under fire for rejecting its own constitutional pronouncements, leading to a feeling of uncertainty. For example, verdicts in historic instances like Golaknath v. State of Punjab and Kesavananda Bharati v. State of Kerala exhibited court reversals, illustrating the subjective character of judicial interpretation.

U.S.A.: In the U.S., the Supreme Court has also switched its opinion on major matters, reflecting alterations in judicial philosophy rather than solid legal principles. This phenomenon of overturning precedent, as seen in cases such as *Brown v. Board of Education,*[15] has both progressive and conservative implications while also introducing unpredictability into the legal system.

While both India and the United States have adopted judicial review as a way of preserving constitutional integrity, critiques in each nation highlight distinct concerns. Judicial review, while a cornerstone of constitutionalism, is still being scrutinised for its influence on democracy, efficiency, and legislative responsibility. This comparative research identifies possibilities for change and raises basic concerns about the function of the judiciary in a democratic society, sparking continuing discussions about the balance between judicial monitoring and representative governance.

CONCLUSION

It can be concluded that Judicial review is a cornerstone of constitutional governance in both India and the United States, supporting the balance of power between government branches and protecting individuals' rights. The United States pioneered judicial review through landmark cases like Marbury v. Madison, firmly establishing the Supreme Court's authority to check legislative and executive actions against constitutional principles. Inspired by this model, India included judicial review to meet the special needs of a varied, federal democracy, making it a key component of its Constitution and broadening its reach to protect federalism and fundamental rights.

The judicial systems in India and the United States have distinct but complementary approaches to judicial review, shaped by cultural, legal, and historical factors. In India, the Supreme Court frequently interprets broad constitutional mandates, sometimes stepping into judicial activism to address societal issues. In contrast, the U.S. judiciary operates with a stricter separation of

[15] 347 US 483 (1954).

ISSN (O): 2584-2196

powers, though it occasionally exercises judicial activism in landmark cases like *Brown v. Board of Education.*

Both systems have difficulties, such as balancing judicial independence and democratic responsibility, as well as criticism for overreach or a lack of discipline. However, judicial review remains an important tool for implementing constitutional demands and upholding democratic ideals. Studying the judicial review methods in India and the United States provides a better understanding of how each judiciary influences government and advances constitutional values. This comparative research indicates that, despite variations in application, judicial review is critical for maintaining a stable legal system, preserving individual rights, and ensuring that all parts of government work within constitutional constraints.